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March 3, 2006

Fax: (202) 720-8868
Dexter.Thomas@usda.gov

Mr. Dexter Thomas
EDI Comments
AMS, F&V, PACA Branch
1400 Independence Ave., S.W., Room 2095-S
Washington, D.C. 20250-0242

Dear Mr. Thomas:

Subject: Regulations under the Perishable Agricultural Commodities Act (PACA), Docket FV-05-373

Established in 1926, Western Growers is an agricultural trade association whose nearly 3,000 members grow, pack and ship 90% of the fresh vegetables and nearly 70% of fresh fruits and nuts grown in Arizona and California. This accounts for more than one-half of the nation's fresh produce production. Many of these members are licensees under the Perishable Agricultural Commodities Act (PACA) or are growers who directly benefit from the PACA regulations that insure the payment of the perishable commodities shipped in interstate commerce.

On behalf of these diverse members, I am submitting comments on the Federal Register published January 30, 2006. The opportunity to comment on Electronic Data Interchange (EDI) when invoicing and seeking protection under the PACA statutory trust is critical to the financial protection of sellers of perishable commodities. Western Growers offers its strong support for modifying the regulations of the Perishable Agricultural Commodities Act to streamline the regulations for EDI invoicing practices.

The main concerns Western Growers has with the current regulations are that PACA trust rights may not be preserved if: 1) the buyer either willingly or through oversight does not receive the entire electronic transmission (EDI) invoice, 2) the buyer does not download the trust information, 3) the buyer does not opt to receive the information, 4) the buyer does not buy the data field from the EDI service provider that allows the inclusion of the trust language, or 5) the EDI service provider does not translate the field that contains the trust language.

Because of the reasons mentioned above, Western Growers is suggesting that 7 C.F.R. 46.46(f)(3) be amended to read as follows: *["(3) Licensees may choose an alternative method of preserving trust benefits from the requirements described in paragraphs (f)(1) and (2) of this section. Licensees may use their invoice or other billing statement to preserve trust benefits.*

Mailing Address: P.O. Box 2130 • Newport Beach, CA 92658 • Street Address: 17620 Fitch Street, Irvine, CA 92614

T: 949-863-1000 F: 949-863-9028 Internet: www.wga.com

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The alternative method requires that the licensee's invoice or other billing statement, whether documentary or electronic, contain the following statement at the time of mailing or transmission to the debtor, irrespective of whether or not the debtor downloads, receives, or accepts such statement.

(i) The statement: "The perishable agricultural commodities listed on this invoice are sold subject to the statutory trust authorized by section 5(c) of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499e(c)). The seller of these commodities retains a trust claim over these commodities, all inventories of food or other products derived from these commodities, and any receivables or proceeds from the sale of these commodities until full payment is received."; and

(ii) The terms of payment if they differ from prompt payment set out in section 46.2(z) and (aa) of this part, and the parties have expressly agreed to such terms in writing before the affected transactions occur.]

(Sec. 1, 46 Stat. 531, as amended; 7 U.S.C. 499a et seq.)

Western Growers encourages the adoption of this or equivalent language to alleviate the concerns of PACA licensees when transmitting by EDI. This change will reflect industry practices and thus provide the same protection for a seller when issuing a paper invoice or an EDI transmission.

Western Growers has been a strong advocate for the PACA Statutory Trust Provision which serves as a self help tool that can protect assets of licensees. Since the inception of this statutory trust in 1984, trust creditors who have properly preserved their trust rights have recovered hundreds of millions of dollars rightfully owed them when a buyer's business operations cease, become insolvent, or file bankruptcy. To maintain the proven success of the PACA Statutory Trust, the regulations must be amended to evolve with the changes in business practices.

Sincerely,



THOMAS R. OLIVERI

Director, Trade Practices & Commodity Services

TRO/tmg

C: Bruce Summers - Bruce.Summers@usda.gov